

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KASEY E. JONES,

Plaintiff,

vs.

WEATHERBY, INC., a California Corp.,

Defendant.

NO. CV-08-210-JLQ

**ORDER DENYING MOTION TO
DISMISS AND COMPELLING
DISCOVERY**

Before the court is the Defendant's Motion to Dismiss (Ct. Rec. 25) and Motion to Compel Expert Report and Trial Witness List (Ct. Rec. 21), both of which have been responded to in opposition by the Plaintiff (Ct. Rec. 34). Both motions were heard by the court without oral argument on January 13, 2009.

IT IS HEREBY ORDERED:

1. The Defendant's Motion to Dismiss (Ct. Rec. 25) is **DENIED**. Though tardy in so doing, the Plaintiff has explained the logistical reasons for the delay in producing his expert witness report, and has not exhibited explicit bad faith or a desire to hide the truth of the matter. "A terminating sanction, whether default judgment against a defendant or dismissal of a plaintiff's action, is very severe...Only 'willfulness, bad faith, and fault' justify terminating sanctions." *Connecticut General*, 482 F.3d at 1096, citing *Jorgensen v. Cassidy*, 320 F.3d 906, 912 (9th Cir. 2003). Furthermore, general public policy and the policy of this court both favor the disposition of cases on their merits and dismissal of

1 the Plaintiff's claim at this juncture would frustrate that policy.

2 2. The Defendant's Motion to Compel Expert Report and Trial Witness List (Ct.
3 Rec. 21) is **GRANTED**. The court notes that Proof of Service of the Plaintiff's expert
4 witness report (Ct. Rec. 36) has been filed, but his final list of trial witnesses has not.
5 The court's Scheduling Order (Ct. Rec. 8) required that both these filings be made no
6 later than December 15, 2008. The Plaintiff shall immediately and forthwith serve and
7 file his trial witness list. As previously ordered by the court (Ct. Rec. 20), the Defendant
8 shall serve and file its expert reports and trial witness list on or before **January 30, 2009**.
9 It may promptly supplement its list of witnesses upon identification of his firearm expert
10 witness(es).

11 3. In accordance with the court's Order dated December 22, 2008 (Ct. Rec. 20), the
12 Plaintiff is again ordered to immediately and forthwith produce the subject rifle and
13 ammunition to the Defendant for his inspection. No testing or inspection shall be
14 conducted by the Defendant which may change the characteristics of the firearm without
15 the prior consent of the Plaintiff or order of the court. The court is not persuaded that it is
16 improper to allow the Defendant to have custody of the rifle for the purposes of
17 discovery.

18 4. The court notes that the Plaintiff has been tardy in his filings and has not yet
19 complied with the court's Order compelling production of the subject rifle and
20 ammunition. While the court favors the resolution of cases on the merits and not
21 procedure, its patience is not infinite and the parties shall henceforth timely comply with
22 all orders and filing deadlines.

23 The Clerk is hereby directed to enter this Order and furnish copies to counsel.

24 **DATED** this 25th day of January, 2009.

25 s/ Justin L. Quackenbush
26 JUSTIN L. QUACKENBUSH
27 SENIOR UNITED STATES DISTRICT JUDGE
28